

COUNCIL ON ENVIRONMENTAL QUALITY

Publishing of Three Memoranda for Heads of Agencies

August 20, 1980.

The Council on Environmental Quality is publishing three Memoranda for Heads of Agencies.

The first memorandum, dated August 11, 1980, on Analysis of Impacts on Prime and Unique Agricultural Lands in Implementing the National Environmental Policy Act was developed in cooperation with the Department of Agriculture. It updates and supersedes the Council's previous memorandum on this subject of August 1976.

The second memorandum, dated August 11, 1980, requests information on agency agricultural land policies and other information related to the implementation of the first memorandum.

The third memorandum, dated August 10, 1980, on Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory is intended to assist federal agencies in meeting their responsibilities under the President's August 2, 1979 directive.

Edward L. Strohbehn, Jr.,

Executive Director.

Executive Office of the President,
Council on Environmental Quality,
722 Jackson Place, NW., Washington, D.C.

August 11, 1980.

Memorandum for Head of Agencies

Subject: Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act

Approximately one million acres of prime or unique agricultural lands¹ are being converted irreversibly to nonagricultural uses each year. Actions by federal agencies such as construction activities, development grants and loans, and federal land management decisions frequently contribute to the loss of prime and unique agricultural lands directly or indirectly. Often these losses are

¹As used in this memorandum, prime and unique agricultural land is cropland, pastureland, rangeland, forest land or other land, but not urban built-up land, which is capable of being used as prime and unique farmland as defined by the Department of Agriculture (see attachment) [The attachment to this memorandum was § 657.5 of title 7 CFR.]

unintentional and are not necessarily related to accomplishing the agency mission.

On August 30, 1976, CEQ, in cooperation with the Department of Agriculture, issued a memorandum to the heads of federal agencies on the need for analysis of prime or unique farmlands in the preparation and review of environmental impact statements. The memorandum also recommended steps for agencies to take in making such analyses. Since that memorandum was issued, federal agencies' environmental impact statements have begun to include references to the presence of prime or unique farmlands that would be affected by the proposed federal action. Moreover, they have clearly indicated that many federal and federally assisted projects have direct and indirect adverse impact on prime or unique farmlands.

Recent studies by the Council and the General Accounting Office indicate that federal agencies have not adequately accounted for the impacts of their proposed actions on agricultural land through the environmental assessment process. Furthermore, agency project plans and decisions have frequently not reflected the need and opportunities to protect these lands. The purpose of this memorandum is to alert federal agencies to the need and the opportunities to analyze agricultural land impacts more effectively in the project planning process and under the National Environmental Policy Act (NEPA).

Agencies can substantially improve their analysis of impacts on prime or unique agricultural lands by following closely our recently established NEPA regulations (40 CFR 1500-1508, Nov. 29, 1978). The regulations apply to these lands in several specific respects. Determining the effects of a proposed federal agency action on prime or unique agricultural lands must be an integral part of the environmental assessment process, and must be a factor in deciding whether or not to prepare an environmental impact statement. For example, when an agency begins planning any action, it should, in the development of alternative actions, assess whether the alternatives will affect prime or unique agricultural lands. Then, recognizing the importance of these lands and any significant impacts that might affect them, it must study, develop, and describe appropriate alternative uses of available resources. (Sec. 1501.2(c).)

In determining whether to prepare an environmental impact statement, the regulations note that the "Unique characteristics of the geographic area such as . . . prime farmlands . . ." (Sec. 1508.27(b)(3)) must be considered, among others. If an agency determines that a proposal significantly affect the quality of the human environment, it must initiate the scoping process (Sec. 1501.7) to identify those issues, including effects on prime or unique agricultural lands, that will be analyzed and considered, along with the alternatives available to avoid or mitigate adverse effects. An environmental impact statement must include a description of the area that will be affected by the proposed action (Sec. 1502.15) and an analysis of the environmental consequences of the proposal, including a discussion of "natural or depletable resource

requirements and conservation potential or various alternative and mitigation measures" (Sec. 1502.16(f)). These resource requirements include prime or unique agricultural lands. The effects to be studied encompass indirect effects that may include "growth inducing effects and other effects related to induced changes in the pattern of land use . . ." (Sec. 1508.8(b)). The cumulative effects of a proposal must be studied (Secs. 1508.7, 1508.8(b)), as must any mitigation measures that could be taken to lessen the impact on prime or unique agricultural lands (Secs. 1505.2(c), 1508.20). Agencies must also cooperate with state or local governments in their efforts to help retain these lands (Secs. 1502.16(c), 1508.2(d).)

Federal agencies with technical data on the occurrence, value, or potential impacts of federal actions on these lands will provide the lead agency with data that may be useful in preparing environmental assessments or impact statements. The U.S. Department of Agriculture will cooperate with all agencies in planning projects or developments, in assessing impacts on prime or unique agricultural lands, and in defining alternatives. Technical data as assistance regarding agricultural land may be obtained by contacting the Chairperson of the USDA Land Use Committee (list attached) or any USDA office. In addition to providing technical data and assistance, the USDA will continue to emphasize the review of EISs on federal actions likely to have significant effects on prime and unique farmlands. Under Section 1504 of the regulations, USDA should refer to CEQ those proposed federal actions which it believes will be environmentally unsatisfactory because of unacceptable effects on prime or unique farmlands. CEQ will review such referrals, and take necessary steps in accordance with Section 1504 of our regulations.

Because prime and unique agricultural lands are a limited and valuable resource, the Council urges all agencies to make a particularly careful effort to apply the goals and policies of the National Environmental Policy Act to their actions and to obtain necessary assistance in their planning processes so that these lands will be maintained to meet our current national needs and the needs of future generations of Americans.

Gus Speth,

Chairman.

Attachments.

U.S. Department of Agriculture State Land Use Committee Chairpersons

Mr. William B. Lingle, State Conservationist,
Soil Conservation Service, P.O. Box 311,
Auburn, Alabama 36830

Mr. Marvin C. Meier, Director, State and
Private Forestry, 2221 E. Northern Lights
Blvd., Box 6606, Anchorage, Alaska 99502

Mr. Thomas G. Rockenbaugh, State
Conservationist, Soil Conservation Service,
Federal Bldg., Rm. 3008, 230 N. First Street,
Phoenix, Arizona 85025

Mr. M. J. Spears, State Conservationist, Soil
Conservation Service, P.O. Box 2323, Little
Rock, Arkansas 72203

Mr. James H. Hansen, State Resource
Conservationist, Soil Conservation Service,

- 2828 Chiles Road, P.O. Box 1019, Davis, California 95616
- Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, P.O. Box 17107, Denver, Colorado 80217
- Ms. Maria Maiorana Russell, Assistant Director, Community Resource & Staff Dev., Cooperative Extension Service, University of Connecticut, Storrs, Connecticut 06268
- Mr. Otis D. Fincher, State Conservationist, Soil Conservation Service, 204 Treadway Towers, 9 East Lockerman Street, Dover, Delaware 19901
- Mr. William E. Austin, State Conservationist, Soil Conservation Service, P.O. Box 1208, Gainesville, Florida 32601
- Mr. Dwight Treadway, State Conservationist, Soil Conservation Service, P.O. Box 832, Athens, Georgia 30601
- Mr. Jack P. Kanalz, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii 96850
- Mr. Randall Johnson, Farmers Home Administration, U.S. Department of Agriculture, 304 North Eighth Street, Boise, Idaho 83702
- Mr. Warren J. Fitzgerald, State Conservationist, Soil Conservation Service, P.O. Box 678, Champaign, Illinois 61820
- Mr. Robert Bollman, Assistant State Conservationist, Soil Conservation Service, 5610 Crawfordsville Road, Suite 2200, Indianapolis, Indiana 46224
- Mr. Rollin Swank, Assistant State Conservationist, Soil Conservation Service, 693 Federal Bldg., 210 Walnut Street, Des Moines, Iowa 50309
- Mr. John W. Tippie, State Conservationist, 760 South Broadway, P.O. Box 600, Salina, Kansas 67401
- Mr. Glen E. Murray, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky 40504
- Dr. Floyd L. Corty, Ag. Econ. & Agribusiness, Louisiana State University, Baton Rouge, Louisiana 70803
- Mr. Eddie L. Wood, State Conservationist, Soil Conservation Service, USDA Bldg., Univ. of Maine, Orono, Maine 04473
- Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, Rm. 522, Hartwick Bldg., 4321 Hartwick Road, College Park, Maryland 20740
- Dr. Gene McMurtry, Assoc. Dir., Coop. Ext. Service, Stockbridge Hall, Rm. 211, University of Massachusetts, Amherst, Massachusetts 01003
- Dr. Raleigh Barlowe, 323 Natural Resources Bldg., Michigan State University, East Lansing, Michigan 48824
- Mr. Harry M. Major, State Conservationist, Soil Conservation Service, 316 North Robert Street, St. Paul, Minnesota 55101
- Mr. Billy C. Griffin, Deputy State Conservationist, Soil Conservation Service, P.O. Box 610, Jackson, Mississippi 39205
- Mr. Kenneth G. McManus, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, P.O. Box 459, Columbia, Missouri 65201
- Mr. Van K. Haderlie, State Conservationist, Soil Conservation Service, Federal Bldg., P.O. Box 970, Bozeman, Montana 59715
- Mr. Russell Schultz, Soil Conservation Service, Federal Bldg., U.S. Courthouse, Rm. 345, Lincoln, Nebraska 68508
- Mr. Gerald C. Thola, State Conservationist, Soil Conservation Service, P.O. Box 4850, Reno, Nevada 89505
- Mr. Roger Leighton, James Hall, University of New Hampshire, Durham, New Hampshire 03824
- Mr. Plater T. Campbell, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, P.O. Box 219, Somerset, New Jersey 08873
- Mr. Thomas G. Schmeckpeper, Deputy Regional Forester, U.S. Forest Service, Rm. 5424, Federal Bldg., 517 Gold Avenue, S.W., Albuquerque, New Mexico 87102
- Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, U.S. Courthouse & Federal Bldg., 100 South Clinton St., Rm. 771, Syracuse, New York 13280
- Mr. Mitchell E. Clary, Assistant State Conservationist, Soil Conservation Service, P.O. Box 27307, Raleigh, North Carolina 27611
- Mr. Sylvester C. Ekart, Chairman, North Dakota Land Use Comm., Federal Bldg., P.O. Box 1458, Bismarck, North Dakota 58501
- Mr. Robert R. Shaw, State Conservationist, Soil Conservation Service, Federal Bldg., Rm. 522, 200 N. High Street, Columbus, Ohio 43215
- Mr. Bobby T. Birdwell, Soil Conservation Service, Agricultural Center Office Bldg., Farm Road & Brumley Street, Stillwater, Oklahoma 74074
- Mr. Guy Nutt, State Conservationist, Soil Conservation Service, Federal Bldg., 16th Floor, 1220 SW Third Avenue, Portland, Oregon 97204
- Mr. Thomas B. King, Associate Director, Cooperative Extension Service, The Pennsylvania State University, 323 Agricultural Admin. Bldg., University Park, Pennsylvania 16802
- Mr. Richard F. Kenyon, State Executive Director, Agricultural Stabilization and Conservation Service, 222 Quaker Lane, West Warwick, Rhode Island 02893
- Mr. K. G. Smith, State Director, Farmers Home Administration, 240 Stoneridge Drive, Columbia, South Carolina 29210
- Mr. Wayne D. Testerman, State Executive Director, Agricultural Stabilization and Conservation Service, 200 Fourth Street, SW., Federal Bldg., Rm. 210, Huron, South Dakota 57350
- Dr. M. Lloyd Downen, Director, Agricultural Extension, University of Tennessee, P.O. Box 1071, Knoxville, Tennessee 37901
- Mr. George C. Marks, State Conservationist, Soil Conservation Service, P.O. Box 648, Temple, Texas 76701
- Mr. Reed Page, State Director of the Farmers Home Administration, 125 South State St., Rm. 5434, Salt Lake City, Utah 84138
- Mr. Coy Garrett, State Conservationist, Soil Conservation Service, One Burlington Square, Suite 205, Burlington, Vermont 05401
- Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, P.O. Box 10028, Richmond, Virginia 23240
- Mr. Lester N. Liebel, Ext. Rural Development Coord., Cooperation Extension Service, Washington State University, 417, Ag. Phase II, Pullman, Washington 99163
- Mr. Craig M. Right, State Conservationist, Soil Conservation Service, P.O. Box 865, Morgantown, West Virginia 26505
- Mr. Jerome C. Hytry, State Conservationist, Soil Conservation Service, 4601 Hammersley Road, Madison, Wisconsin 53711
- Mr. Robert W. Cobb, Assistant State Conservationist, Soil Conservation Service, P.O. Box 2440, Casper, Wyoming 82601

Executive Office of the President,
Council on Environmental Quality,
722 Jackson Place, NW., Washington, D.C.
August 11, 1980.

Memorandum for Heads of Agencies

Subject: Prime and Unique Agricultural Lands and the National Environmental Policy Act (NEPA)

The accompanying memorandum on Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act was developed in cooperation with the Department of Agriculture. It updates and supersedes the Council's previous memorandum on this subject of August 1976.

In order to review agency progress or problems in implementing this memorandum the Council will request periodic reports from Federal agencies as part of our ongoing oversight of agency implementation of NEPA and the Council's regulations. At this time we would appreciate receiving from your agency by November 1, 1980, the following information:

- identification and brief summary of existing or proposed agency policies, regulations and other directives specifically intended to preserve or mitigate the effects of agency actions on prime or unique agricultural lands, including criteria or methodology used in assessing these impacts.
- identification of specific impact statements and, to the extent possible, other documents prepared from October 1, 1979 to October 1, 1980 covering actions deemed likely to have significant direct or indirect effects on prime or unique agricultural lands.
- the name of the policy-level official responsible for agricultural land policies in your agency, and the name of the staff-level official in your agency's NEPA office who will be responsible for carrying out the actions discussed in this memorandum.

Gus Speth,
Chairman.

Executive Office of the President,
Council on Environmental Quality,
722 Jackson Place, NW., Washington, D.C.
August 10, 1980.

Memorandum for Heads of Agencies

Subject: Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory

In his second Message on the Environment, issued in August 1979, the President underscored the need to strengthen the National Wild and Scenic Rivers System and to take particular care not to harm rivers

which may qualify for inclusion in the System.

The President issued a directive on August 2, 1979 in conjunction with his Message which required that:

"Each Federal agency shall, as part of its normal planning and environmental review process, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory prepared by the Heritage Conservation and Recreation Service in the Department of the Interior. Agencies shall, as part of their normal environmental review process, consult with the Heritage Conservation and Recreation Service prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory."

This memorandum is intended to assist your agency in meeting its responsibilities under the President's directive. A brief set of procedures is attached which provides guidance on how to integrate these responsibilities with your normal environmental analysis process under the National Environmental Policy Act (NEPA). The objective is to ensure that the President's directive is met promptly and efficiently.

Development along our rivers continues to outpace our ability to protect those rivers that might qualify for designation in the National Wild and Scenic Rivers System. The Heritage Conservation and Recreation Service (HCRS) in the Department of the Interior has been preparing a Nationwide Inventory of river segments that, after preliminary review, appear to qualify for inclusion in the System. It is therefore essential that federal agencies proceed carefully and limit any adverse effects of their actions on rivers identified in the Nationwide Inventory. Otherwise, the Inventory could be depleted before the identified rivers can be fully assessed to determine the desirability of including them as components of the National Wild and Scenic Rivers System.

Although the President's directive does not prohibit an agency from taking, supporting or allowing an action which would adversely affect wild and scenic values of a river in the Inventory, each agency is responsible for studying, developing and describing all reasonable alternatives before acting, and for avoiding and mitigating adverse effects on rivers identified in the Inventory. Where agency action could effectively foreclose the designation of a wild, scenic, or recreational river segment, the President has directed the agency to consult with HCRS. It is difficult to restore a river and its immediate environment once its wild and scenic qualities have been lost.

The purpose of this consultation requirement, which is meant to be part of the normal environmental analysis process, is to provide the opportunity for HCRS experts to assist other agencies in meeting program objectives without irreparably damaging potential wild, scenic, and recreational river areas. Consultation with HCRS should encourage better planning at an early stage in order to reduce resource management conflicts or to avoid them altogether. The consultation requirement also provides an

opportunity to seek early resolution of problems by policy-level officials if necessary.

Completed portions of the Nationwide Inventory—those for the Eastern half of the country—were sent to you from HCRS Director Chris T. Delaporte on November 13, 1979. Forthcoming portions of the Inventory will be transmitted as they are completed. You should ensure that the list of rivers in the Inventory and the attached procedures receive wide distribution in your agency.

Copies of orders, guidance, or memoranda which you use to adopt or to transmit the attached procedures within your agency should be sent to the Council on Environmental Quality (Attention: Larry Williams) and to the Interagency Wild and Scenic Rivers Study Group (Attention: Jack Hauptman, HCRS, 440 G Street, N.W., Washington, D.C. 20243).

Gus Speth,

Chairman.

Attachment.

Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory

These procedures are designed to assist federal officials in complying with the President's directive (attached) to protect rivers in the Nationwide Inventory through the normal environmental analysis process. NEPA, E.O. 11514, CEQ's NEPA Regulations, and agency implementing procedures should be used to meet the President's directive.

Although the steps outlined below pertain to wild and scenic river protection, they also fit clearly within agencies' existing environmental analysis processes. Agencies are already required to identify and analyze the environmental effects of their actions; to consult with agencies with jurisdiction by law or special expertise (in this case, HCRS); to develop and study alternatives; and to use all practicable means and measures to preserve important historic, cultural, and natural aspects of our national heritage.

The procedures outlined below simply link the appropriate elements of the normal environmental analysis process with the President's directive "to take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory." Federal officials should promptly take steps to incorporate the actions specified below into their planning and decisionmaking activities and the conduct of their environmental analyses.

1. Determine whether the proposed action could affect an Inventory river.

Check the current regional Inventory lists to determine whether the proposed action could affect an Inventory river.

If an Inventory river could be affected by the proposed action, an environmental assessment or an environmental impact statement may be required depending upon the significance of the effects.

If the action would not affect an Inventory river, no further action is necessary under these procedures. (The agency is still required to fulfill any other responsibilities under NEPA).

2. Determine whether the proposed action could have an adverse effect on the natural,

cultural and recreational values of the Inventory river segment.

Using the Guide for Identifying Potential Adverse Effects, which is appended to these procedures, you should determine whether the proposed action could adversely affect the natural, cultural, or recreational values of the Inventory river segment. Adverse effects on inventoried rivers may occur under conditions which include, but are not limited to:

- (1) Destruction or alteration of all or part of the free flowing nature of the river;
- (2) Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;
- (3) Deterioration of water quality; or
- (4) Transfer or sale of property adjacent to an inventoried river without adequate conditions or restrictions for protecting the river and its surrounding environment.

If you have prepared a document which finds that there would be no adverse effects—such as a Finding of No Significant Impact under the CEQ NEPA regulations—you should send a courtesy copy to the HCRS field office in your region.

3. Determine whether the proposed action could foreclose options to classify any portion of the Inventory segment as wild, scenic or recreational river areas.

In some cases, impacts of a proposed action could be severe enough to preclude inclusion in the Wild and Scenic Rivers System, or lower the quality of the classification (e.g. from wild to recreational). If the proposed undertaking would effectively downgrade any portion of the Inventory segment you should consult with HCRS.

Proposed actions (whether uses or physical changes), which are theoretically reversible, but which are not likely to be reversed in the short terms, should be considered to have the effect of foreclosing for all practical purposes wild and scenic river status. This is because a river segment, when studied for a possible inclusion in the Wild and Scenic River System, must be judged as it is found to exist at the time of the study, rather than as it may exist at some future time.

If a proposal, including one or more alternatives, could have an adverse effect on a river in the Inventory, an environmental assessment or, if the effects are significant, an environmental impact statement must be prepared. HCRS staff is available to assist you in determining the significance or severity of the effects in connection with your assessment, scoping process, and EIS, if one is needed. A detailed analysis of each of the rivers in the Inventory is available from HCRS for your use.

You should request assistance in writing from HCRS, as early as you can, providing sufficient information about the proposal to allow HCRS to assist you in determining whether any of the alternatives under consideration would foreclose designation. HCRS will in turn provide you with an analysis of the impacts on natural, cultural and recreational values which should enable you to make a determination as to whether or not designation would be foreclosed. HCRS is available to assist you in developing appropriate avoidance/mitigation measures.

When environmental assessments are prepared on proposals that affect Inventory

rivers, copies should be sent in a timely fashion to the HCRS field office in your area before a proposed action is taken and while there is still time to avoid or mitigate adverse effects. When environmental impact statements are prepared on proposals that affect Inventory rivers the lead agency should request HCRS and the affected land managing agency to be cooperating agencies as soon as the Notice of Intent to prepare an EIS has been published.

If HCRS does not respond to your request for assistance within 30 days, you may proceed with completing preparation and circulation of the environmental assessment or EIS as planned. Even where HCRS has been unable to comment on the environmental assessment or Draft EIS, you are still obligated by the President's directive to "... take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory ..."

4. Incorporate avoidance/mitigation measures into the proposed action to maximum extent feasible within the agency's authority.

Any environmental documents prepared on the proposed action should identify the impacts on natural, cultural and recreational values, address the comments submitted by HCRS, and state the avoidance/mitigation measures adopted. Any disagreements will be resolved through existing procedures. For projects requiring environmental impact statements, the record of decision must adopt appropriate avoidance/mitigation measures and a monitoring and enforcement program as required by the CEQ regulations. (40 CFR 1505.2(c)).

A Note on the Meaning of "Federal Actions"

The above procedures are meant to apply to all federal actions that could adversely affect a river in the Nationwide Inventory (see Section 1508.18 of CEQ's NEPA Regulations (40 CFR 1508.18) for the meaning of "major federal actions"). For actions which are known in advance to require an environmental assessment or environmental impact statement these procedures would be followed in the normal course of NEPA compliance. If a federal action would *not* normally require an environmental assessment or an environmental impact statement, but could adversely affect a river in the Nationwide Inventory, the action should either (1) not be "categorically excluded" under agency implementing procedures, or (2) be considered an "extraordinary circumstance" in which a normally excluded action must be subjected to environmental analysis (see Section 1508.4 of NEPA Regulations).

The above procedures should be used for any proposals (including the evaluation of alternative courses of action) for which the NEPA process is not yet completed. The above procedures should therefore also be applied to a proposed modification or supplement to a previously authorized or implemented action.

For Further Information or Guidance

The HCRS regional office will usually provide the best source of information on rivers in the Nationwide Inventory and on

specific ways that these rivers could be protected. For general assistance on policy and procedural matters, please contact the Chairman of the Interagency Wild and Scenic Rivers Study Group (202/343-4793), or contact the Council on Environmental Quality (202/395-4540).

Appendix I.

Guide for Identifying Potential Adverse Effects

The impact of a proposed action should be assessed in relation to the eligibility and classification criteria of the Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287, as amended.

In order to be eligible for inclusion in the National System, a river must:

1. Be "free-flowing," i.e., "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, or low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of national wild and scenic rivers system." (16 U.S.C. Sec. 1286)

2. Possess "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values." (16 U.S.C. Sec. 1271)

Eligible river segments are classified according to the extent of evidence of man's activity as one of the following:

1. "Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America."

2. "Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads."

3. "Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past." (16 U.S.C. Sec. 1273(b))

Any action which could alter the river segment's ability to meet the above eligibility and classification criteria should be considered an adverse impact. Actions which diminish the free-flowing characteristics or outstandingly remarkable values of a river segment could prevent the segment from qualifying for inclusion in the national system. Actions which increase the degree of evidence of man's activity, i.e., level of development, could change the classification of the river segment.

The effect of all proposed developments within the river corridor should be assessed in terms of severity of effect and extent of area affected. Development outside the corridor which would cause visual, noise, or

air quality impacts on the river corridor should also be examined.

Only proposed new construction or proposed expansion of existing developments need be considered in assessing impacts. Repair or rehabilitation of existing structures would not have a negative impact except if the action would result in significant expansion of the facility or if the construction process itself would cause an irreversible impact on the environment.

Placement of navigation aids such as buoys and channel markers will not be considered as causing adverse effects.

The following are examples of types of developments which would generally require consultation with HCRS because of the potential for adverse effects on the values of a potential wild, scenic, or recreational river. The list is not exhaustive.

Small dock	Road
Small bulkhead	Railroad
Clearing and snagging	Building (any type)
Drainage canal, culvert or outfall	Pipeline, transmission line
Irrigation canal	Bridge or ford
Levee or dike	Gas, oil or water well
Rip-rap, bank stabilization or erosion control structure	Sub-surface mine opening
Small reservoir	Quarry
Increase in commercial navigation	Power substation
Dredging or filling	Recreation area
Run-of-the-river dam or diversion structure	Dump or junkyard
	Change in flow regime
	Clear-cut timber harvest
	Radio tower, windmill

The following are examples of types of development which appear most likely to cause serious adverse effects if they are constructed adjacent to or in close proximity to an Inventory river. Such development proposals will almost always require consultation with HCRS because their effects are likely to conflict with the values of a potential wild, scenic or recreational river. These effects could be severe enough to foreclose designation of the affected river segment. This list is not exhaustive.

Impoundment	Major highway
Channelization	Railroad yard
Instream or surface mining	Power plant
Lock and dam	Sewage treatment plant
Airport	Housing development
Landfill	Shopping center
Factory	Industrial park
Gas or oil field	Marina
	Commercial dock

Appendix II

[For a memorandum from the President on Wild and Scenic Rivers and National Trails dated August 2, 1979, see the *Weekly Compilation of Presidential Documents* (Vol. 15, page 1379).]

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